



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

JAMES RUTLEDGE, JR., §
Petitioner, §
§
vs. § CIVIL ACTION NO. 0:05-1220-HFF-BM
§
SC DEPARTMENT OF CORRECTIONS §
and HENRY DARGAN MCMASTER, §
Attorney General for South Carolina, §
Respondents. §

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE, GRANTING RESPONDENTS' MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING PETITIONER'S PETITION *WITH PREJUDICE* FOR
HAVING BEEN FILED OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS

This case was filed as a habeas corpus action pursuant to 28 U.S.C. § 2254. Petitioner is proceeding *pro se*. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court grant Respondents' Motion for Summary Judgment and dismiss Petitioner's Petition *with prejudice* for having been filed outside the applicable statute of limitations. The Report is made in accordance with 28 U.S.C. § 636, and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 20, 2006, and Petitioner's objections were received by the Clerk of Court on July 10, 2006. The Court has made a careful review of Petitioner's objections, but finds them to be without merit. Simply stated, Petitioner failed to timely file his federal petition. Moreover, he has failed to establish that equitable tolling is appropriate here. Therefore, Petitioner is barred from seeking federal habeas relief in this instance.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court that Respondents' Motion for Summary Judgment must be **GRANTED** and Petitioners' Petition must be **DISMISSED**, *with prejudice*, for having been filed outside the applicable statute of limitations.

IT IS SO ORDERED.

Signed this 12th day of July, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.